

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

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CLERK

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MIRIAM LOWELL and SETH HEALEY,)

Plaintiffs,)

v.)

VERMONT DEPARTMENT OF)
CHILDREN AND FAMILIES ("DCF");)
KENNETH SCHATZ, COMMISSIONER,)
DCF; KAREN SHEA, DEPUTY)
COMMISSIONER FOR THE FAMILY)
SERVICES DIVISION ("FSD"), DCF;)
CHRISTINE JOHNSON, DEPUTY)
COMMISSIONER FOR FSD, DCF;)
EMILY CARRIER, DISTRICT)
DIRECTOR, DCF; CATHERINE CLARK,)
DIRECTOR, COMMISSIONER'S)
REGISTRY REVIEW UNIT, DCF;)
KATHLEEN SMITH, FAMILY)
SERVICES SUPERVISOR, DCF;)
CHRISTINE GADWAH, FAMILY)
SERVICES WORKER, DCF;)
KATHLEEN GREENMUN,)
SUBSTANTIATION HEARING OFFICER)
DCF; and JOHN AND JANE DOES 1-10,)

Defendants.)

Civil Action No.

DEMAND FOR JURY TRIAL

5:19-cv-150

COMPLAINT

Plaintiffs Miriam Lowell and Seth Healey (pseudonyms used to protect their privacy), for their Complaint against Defendants DCF, Kenneth Schatz, Karen Shea, Christine Johnson, Emily Carrier, Catherine Clark, Kathleen Smith, Christine Gadwah, Kathleen Greenmun, and John and

Jane Does 1-10,¹ upon personal knowledge with respect to Plaintiffs and their own acts, upon information and belief as to all other matters, and with the belief that all matters alleged herein will have evidentiary support after reasonable opportunity for further investigation and discovery, state as follows:

INTRODUCTION

1. On August 10, 2018, Miriam Lowell's daughter falsely told a counsellor that Ms. Lowell snorted a pill. No further details were provided, including the time or location of this alleged incident.

2. The counselor contacted Defendant Christina Gadwah of DCF and reported what she had been told by Ms. Lowell's daughter.

3. Without any substantive investigation or inquiry, Defendant Gadwah and the rest of the Defendants proceeded to: (i) extrajudicially remove Ms. Lowell's three children from her home for 305 days for two of the children and 356 days for the third; (ii) violate confidentiality requirements and inform Ms. Lowell's former husbands of DCF's investigation, and a false "substantiation" for child abuse; (iii) urge Ms. Lowell's former husbands to sue for full custody; (iv) improperly appear at a custody hearing in Ms. Lowell's divorce proceeding and advise the Court on the status of the "substantiation" for child abuse; (v) coerce Ms. Lowell to enter drug treatment programs, undergo urinalysis testing for drugs, and take the anti-addiction opiate drug suboxone, all despite the fact that Ms. Lowell had not used illegal drugs for approximately 18 years; (vi) fabricate evidence, make false accusations against Ms. Lowell and Mr. Healey, and ignore exculpatory evidence in conducting their "investigation"; and (vii) cause Ms. Lowell to lose her job and her and Mr. Healey's good names and reputations.

¹ The Defendants other than the State of Vermont (the "Individual Defendants") are various persons who are associated with DCF.

4. After all of those events already occurred, Defendants and DCF made the initial administrative finding to “substantiate” Ms. Lowell and Mr. Healey as child abusers. This determination was based on Defendant Gadwah’s flawed and unconstitutional “investigation” and Defendant Smith’s case determination. This investigation was based on fabricated and false evidence, and Defendants ignored exculpatory evidence.

5. Those past actions violated Ms. Lowell’s right to due process under the United States and Vermont Constitutions and under Vermont law, by depriving her of liberty and property interests, including Ms. Lowell’s interest in the care, custody, and control of her children, without due process of law.

6. Those violations of her due process rights were not only inadequate procedurally, a fact Defendants were well aware of, they were also done with an illegitimate motive, the unfounded and prejudicial belief that Plaintiffs were drug users, and animus therefor. The Defendants’ behavior, including: (i) extrajudicially separating families without any investigatory process on the very same day the incident was reported; (ii) coercing Ms. Lowell to enter drug treatment and take dangerous opiate drugs without cause or reason; and (iii) violating Ms. Lowell’s confidentiality rights by contacting her ex-husbands and appearing at her custody hearings during the investigation and announcing in a court proceeding that “we are substantiating [Ms. Lowell]” as a child abuser, shocks the conscience and is a violation of Ms. Lowell’s due process rights.

7. The liberty interests at issue here include “the interest of parents in the care, custody, and control of their children,” an interest that the Supreme Court called “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). This legal point has recently been echoed by Thomas J. Donovan,

Vermont's Attorney General, who explained in a recent letter from a group of state Attorneys General to the U.S. Attorney General and Director of Homeland Security that, without a "rigorous judicial inquiry resulting in a finding that a parent is unfit or proof beyond a reasonable doubt that a crime has been committed," policies "that separate a child from his or her parent" would "not only be illegal under most state laws, but also may be contrary to the policy views of state legislatures and their constituents across this country."

8. A few months before Defendants separated Ms. Lowell from her children, the State of Vermont, as a plaintiff in federal court, explained that Vermont has a duty "to preserve the family and to separate a child from his or her parents only when necessary." It also explained that family separation damages and traumatizes both children and their parents. Nevertheless, Defendants separated Ms. Lowell and her children and knowingly violated Plaintiffs' rights to due process.

9. In addition, the Defendants failed to obey Vermont law, which requires them to hold a hearing reviewing an initial administrative finding of substantiation of the charges within 35 days. Despite the fact that it has been over a year since the initial accusation, and more than 9 months since DCF's and Defendants' initial findings (and Plaintiffs' timely appeals of those findings), the required hearings have not taken place. They were finally scheduled to occur on August 28, 2019 (the "Substantiation Hearings").

10. The scheduled Substantiation Hearings, if they would proceed under DCF's current rules, policies and procedures, would further violate Ms. Lowell's and Mr. Healey's rights to due process under the United States and Vermont Constitutions. The Substantiation Hearings are flawed in multiple ways, including that Plaintiffs:

- Have not been provided with sufficient details of the charges against them to defend themselves;

- Do not know the extent of the evidence against them;
- Do not have access to their full case files, despite the fact that DCF and the Substantiation Hearing Officer does have access to the full case files;
- Only have access to “redacted investigation files,” (the “Redacted Investigation Files”) that are redacted so heavily as to obscure the charges and evidence against them, and that contain fabricated evidence and appear to ignore exculpatory evidence in the few portions that are unredacted;
- Are unable to present evidence in their defense. In particular, DCF’s procedures would prevent Ms. Lowell and Mr. Healey from presenting the best evidence that one of Ms. Lowell’s sons does not have scarring on his back, which directly rebuts evidence of abuse cited in Mr. Healey’s Redacted Investigations File;
- Are unable to present testimony from Ms. Lowell’s daughter, who would testify that the single original allegation that she made against her mother, regarding the pill, was false, and that the other allegations against Plaintiffs were never made, and appear to have been fabricated;
- Are unable to cross-examine the investigator and other witnesses whose credibility the Substantiation Hearing Officer would be required to assess and depend on in reaching her conclusions;
- Would not know about, and therefore would be unable to contest, challenge, or present contrary evidence to, post-hearing *ex parte* statements and “evidence” that any DCF officials may present to the Substantiation Hearing Officer. Such *ex parte* communication is expressly permitted under DCF’s rules, policies and procedures, and routinely is undertaken by hearing officers, despite Defendants being put on notice that this violates the due process rights of the accused and the intent of the Vermont legislature.

11. On August 22, 2019, Defendant Clark wrote to counsel for Plaintiffs, verified many of these flawed procedures, and stated that Defendants nevertheless intend to proceed with the Substantiation Hearing.

12. In a clear admission, she expressly stated that the Substantiation Hearing “is not a fair hearing.”

13. The potential results of this admittedly unfair hearing are catastrophic for Plaintiffs. If DCF’s finding of substantiation were to be upheld at the Substantiation Hearing, in addition to being formally labelled as child abusers, Ms. Lowell and Mr. Healey would be

permanently placed on Vermont's Child Protection Registry, a database of all investigations since 1992 that have resulted in a substantiated report of child abuse or neglect. The information on the Registry is available to many members of the public, including employers and agencies that sponsor volunteers. According to a publication of the DCF as of December 19, 2018, "When a person's name is on the Registry, he or she may be denied the opportunity to be employed in certain jobs, or to volunteer for such activities as chaperoning school trips." In addition to the potential for renewed loss of custody of Ms. Lowell's children, and the stigma of being labelled child abusers, placement on the Registry would alter Ms. Lowell's and Mr. Healey's legal status and deprive them of custody of Ms. Lowell's children, and freedom of employment or to volunteer as they choose.

14. Accordingly, Ms. Lowell brings this action, pursuant to 42 U.S.C. § 1983, and under Vermont law, for damages that she has already suffered due to the Defendants' violations of her civil rights, and Mr. Healey joins her in bringing this action to enjoin the Defendants who are currently acting on behalf of DCF from further violating their civil rights as a result of the improper and unconstitutional procedures that would occur at the Substantiation Hearing.

15. DCF's actions also violate the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), because DCF regarded (falsely) Ms. Lowell and Mr. Healey as being addicted to drugs (a protected disability) and discriminated against them on the basis of the perceived addiction.

16. Plaintiffs filed this Complaint today because, after Defendant Clark's admission, they must seek declaratory and injunctive relief to prevent further violations of their rights due to the Substantiation Hearing. In addition to the causes of action described in this Complaint, Plaintiffs intend to amend the Complaint at the earliest possible opportunity to include various

other civil causes of action against the Defendants based on their knowing and systematic disregard for Plaintiffs' civil rights and due process, as well as for the truth itself.

THE PARTIES

17. Plaintiff Miriam Lowell is a natural person residing at [Redacted], Vermont. Ms. Lowell is seeking the Court's permission to proceed under a pseudonym.

18. Plaintiff Seth Healey is a natural person residing at [Redacted], Vermont. Mr. Healey is seeking the Court's permission to proceed under a pseudonym.

19. Defendant Vermont Department of Children and Families is a state agency with a principal place of business at 280 State Drive, Waterbury, Vermont 05671. DCF is a "department, agency, . . . or other instrumentality of a State," as defined by the ADA, and conducts several types of "program[s] or activit[ies]" that receive federal financial assistance, as defined by the Rehabilitation Act.

20. Defendant Kenneth Schatz is a natural person residing at 86 Central Avenue, South Burlington, Vermont 05403, with a principal place of business at 280 State Drive, Waterbury, Vermont 05671. He is the DCF's Commissioner, and is an active, licensed attorney in Vermont. He is being sued in his individual capacity for damages and in his official capacity for declaratory and injunctive relief.

21. Defendant Karen Shea is a natural person residing at 13 Church Street, Woodstock, Vermont 05091. Until approximately May 23, 2019, she was the Deputy Commissioner for DCF's FSD. She is being sued in her individual capacity for damages and in her official capacity for declaratory and injunctive relief.

22. Defendant Christine Johnson is a natural person residing at 31 Cedar Street, Essex Junction, Vermont 05452, with a principal place of business at 280 State Drive, Waterbury,

Vermont 05671. She is the Deputy Commissioner for DCF's FSD. She is being sued in her individual capacity for damages and in her official capacity for declaratory and injunctive relief.

23. Defendant Emily Carrier is a natural person residing at 84 Library Road, Danville, Vermont 05828, with a principal place of business at 1016 U.S. Route 5, Suite 02, St. Johnsbury, Vermont 05819. She is the District Director for DCF's St. Johnsbury District Office. She is being sued in her individual capacity for damages and in her official capacity for declaratory and injunctive relief.

24. Defendant Catherine Clark is a natural person residing at 51 West Main Street, Apartment 6, Richmond, VT 05477, with a principal place of business at 280 State Drive, Waterbury, Vermont 05671. She is the Director of the Commissioner's Registry Review Unit for DCF, and is an active, licensed attorney in Vermont. She is being sued in her individual capacity for damages and in her official capacity for declaratory and injunctive relief.

25. Defendant Kathleen Smith is a natural person residing at 50 Horse Meadow Road, North Haverhill, New Hampshire 03774, with a principal place of business at 1016 U.S. Route 5, Suite 02, St. Johnsbury, Vermont 05819. She is a Family Services Supervisor at DCF and acted as Defendant Gadwah's supervisor at all relevant times. She is being sued in her individual capacity for damages and in her official capacity for declaratory and injunctive relief.

26. Defendant Christina Gadwah is a natural person residing at 553 Lancaster Road, Groveton, New Hampshire 03582. During the relevant time period, she was employed by DCF as a Family Services Worker. She is being sued in her individual capacity for damages and in her official capacity for declaratory and injunctive relief.

27. Defendant Kathleen Greenmun is a natural person residing at 168 Jersey Way, Morrisville, Vermont 05661. Defendant is the officer (the "Substantiation Hearing Officer")

assigned to oversee the Substantiation Hearing. Defendant is being sued in her official capacity for declaratory and injunctive relief.

28. Defendants John and Jane Does 1-10 are natural persons who have been involved in the wrongful actions alleged in this Complaint, or whose actions are required to finalize or implement the substantiations of the Plaintiffs, and any effects or consequences of the substantiations. They are being sued in their individual capacity for damages and in their personal capacity for declaratory and injunctive relief. Plaintiffs intend to seek expedited discovery to determine the identities of these Defendants.

JURISDICTION AND VENUE

29. This case arises, in part, under the laws of the United States, specifically 42 U.S.C. §1983. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343.

30. The injunctive relief sought in this matter is authorized by 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.

31. The state law claims brought in this case are so closely related to the 42 U.S.C § 1983 federal law claims as to form the same case or controversy under Article III of the United States Constitution.

FACTS

32. Ms. Lowell is a single parent to three children: Mary Weld, who is sixteen, Thaddeus Weld, who is fourteen, and Clement Lowell, who is twelve. She owns a home in [Redacted], Vermont that she shares with her partner, Seth Healey. As with Ms. Lowell and Mr. Healey, this Complaint refers to the children using pseudonyms to protect their privacy.

33. Ms. Lowell was employed as a personal care specialist by an in-home care provider, until she was terminated on or about September 20, 2018, due to her being falsely labelled as a child abuser by DCF.

34. Ms. Lowell has been married and divorced twice. Her first ex-husband is the father of Mary Weld and Thaddeus Weld, and her second ex-husband is Clement Lowell's father.

DCF's Prior Case Involving Mr. Healey's Children

35. In approximately 2015, Defendant Gadwah worked on a case involving Mr. Healey's children from a previous relationship. In that case, Defendant Gadwah removed the children from the custody of their mother over allegations of drug use by the mother. DCF and Defendant Gadwah did not perform a home visit, or otherwise conduct any investigation into Mr. Healey's fitness for custody of his children, despite the fact that Mr. Healey had an apartment, a job, and was in a drug treatment program that included the use of suboxone, a drug designed and prescribed to wean former drug users off of opiates.

36. In connection with her 2015 involvement in the case with Mr. Healey's former partner, Defendant Gadwah discovered that Mr. Healey was using suboxone for treatment purposes. She learned this when told him that she was "requiring" him to perform a urinalysis, told him that he must leave his belongings in her office, and then illegally searched them all, including his wallet. He had not been using illegal drugs for approximately 4 years at that time, and was taking the suboxone as part of a treatment program.

37. Both in that previous case and later in dealing with Ms. Lowell, Defendant Gadwah appeared to be biased against Mr. Healey and Ms. Lowell. For example, she consistently refused to allow them to ask questions, and assumed without evidence that Mr.

Healey, and later Ms. Lowell, were addicted to, and using illegal drugs. This violated Plaintiffs' rights under the ADA and the Rehabilitation Act, by treating Plaintiffs as if they were using drugs, when they were not, and also despite the fact that they were rehabilitated, and in Mr. Healey's case in 2015, undergoing treatment for drug addiction.

The August 10, 2018, Report and Meeting

38. On August 10, 2018, during a regularly scheduled appointment with Courtney Mess, Mary Weld's counselor at the Clara Martin Center in Bradford, Vermont, Mary told Ms. Mess that she saw Ms. Lowell snort a pill.

39. Ms. Mess immediately reported Mary Weld's statement to Defendant Gadwah. There was no allegation of child abuse made in connection with this report, as Mary had only told Ms. Mess about the alleged use of the single pill, an allegation that was not true.

40. Defendants refer to Defendant Gadwah and similar DCF employees as "Social Workers." However, Defendant Gadwah is not a Licensed Independent Clinical Social Worker ("LICSW"), a profession recognized and licensed by the State of Vermont, and does not appear to have any state licensing or professional qualifications to support a designation as a social worker. In Vermont, an LICSW is licensed to practice clinical social work, including psychotherapy, without supervision. Psychotherapy is statutorily defined as the provision of treatment, diagnosis, evaluation, or counseling services to individuals or groups, for a consideration, for the purpose of alleviating mental disorders, involving the application of therapeutic techniques to understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behavior that interferes with effective emotional, social, or mental functioning. *See* 26 V.S.A. § 3201(7).

41. Defendant Gadwah has no licensure or formal training in medicine, psychology, social work, or assessing drug use, addiction, or any other matter relevant to the implications of snorting a pill (in a case, unlike here, where it did happen).

42. That same day, August 10, 2018, Defendant Gadwah contacted Mr. Healey and told him that Ms. Lowell and Mr. Healey had to meet with her later that day at the Clara Martin Center, and that they were to bring the all three of Ms. Lowell's children. She told him that if they did not comply with this request, the police would take the children from Ms. Lowell. She stated that she was going to call the children's fathers to come and get the children.

43. Ms. Lowell, Mr. Healey, and the children met with Defendant Gadwah on August 10, 2018.² Ms. Mess was present, along with another woman who was associated with the Lund Family Center, Inc., a private organization that collaborates with DCF on various issues, and that DCF funds.

44. At the meeting, Defendant Gadwah spoke to Mary and Thaddeus Weld together, and then separately, all outside the presence of Ms. Lowell and Mr. Healey.

45. She then brought Ms. Lowell and Mr. Healey into the room. She did not allow them to ask any questions, and repeatedly yelled at Ms. Lowell and Mr. Healey.

46. The meeting was not recorded, and no contemporaneous notes were taken.³

47. At the meeting, Defendant Gadwah, despite yelling herself, repeatedly told Ms. Lowell, Mr. Healey, and Ms. Mess to stop "raising their voices." She then refused to speak to Mr. Healey and eventually ordered him out of the meeting, for no apparent reason.

² The Redacted Investigation Files inaccurately claim that this meeting took place on August 13, 2018.

³ The failure to timely record notes of the meeting appears to violate DCF's Family Services Policy Manual (the "Policies"), including Policies 41, 51 and 52. The Policies are posted on DCF's website and are available at <https://dcf.vermont.gov/fsd/policies>. This violation of procedure violated Ms. Lowell's constitutional due process rights, including by denying her access to evidence relevant to her defense against the false charges DCF has leveled against her.

48. Defendant Gadwah refused to allow Ms. Mess to ask any questions or provide clarifying information, which violates DCF's Policies and procedures, including Policies 41, 51 and 52, which require Family Services Workers such as Defendant Gadwah to obtain any additional information possible from the person who reported the incident, and to enter detailed notes. This violation of procedure violated Ms. Lowell's constitutional due process rights, including by ignoring exculpatory evidence and failing to obtain contemporaneous evidence regarding the allegations.

49. Defendant Gadwah told Ms. Lowell that she was taking the children from her. Defendant Gadwah threatened to call the police if Ms. Lowell did not send her children, who were no longer in her custody, to relatives or their fathers (who were estranged from the children at the time). Believing that she had no other choice and that Defendant Gadwah was going to use the police to enforce the removal of her children, Ms. Lowell arranged to have her sister and her mother take care of the children immediately. Eventually the children went to live with their fathers, at which point Ms. Lowell was prohibited by Defendant Gadwah from contacting them or communicating with them in any way. Defendant Gadwah specifically told Plaintiffs that they were to have absolutely no contact with the three children. Ms. Lowell had no contact or communication with Clement Lowell for 123 days, from August 10, 2018, until December 10, 2018. Ms. Lowell had no contact with her other children for over one month and two weeks, respectively, and then was allowed only contact by very limited text messages and telephone calls for months.

50. DCF Policy 82 sets forth the procedures for immediately separating children from their parents, which includes at least some minimal procedural rights for the parents in emergent circumstances. Defendant Gadwah did not follow these minimum standards, and instead simply

told Ms. Lowell that she was taking the children away from her and threatened criminal sanction if she did not comply. This extrajudicial family separation violated Ms. Lowell's constitutional due process rights, including by failing to allow her any basic procedural rights that would have allowed her to retain custody of her children.

51. Defendant Gadwah did not provide Ms. Lowell with any basis for this extra judicial removal of her children from her home.

52. This removal changed Ms. Lowell's status from a parent with full rights to one who was unable to enjoy the custody and care of her beloved children.

53. Defendant Gadwah's story, and DCF's story, has changed several times regarding the allegations against Ms. Lowell. At first, they claimed that Mary Weld had seen Ms. Lowell snorting a pill (without providing any additional detail, including the time of the alleged incident). Later, they claimed that Ms. Lowell and Mr. Healey forced Mary Weld to drink alcohol and smoke marijuana (an allegation that Ms. Lowell, Mr. Healey, and the children all deny). Still later, they changed their story to claim that unnamed friends of Ms. Lowell and Mr. Healey forced alcohol on Mary Weld. They also appear to have later alleged that Thaddeus Weld was permanently scarred due to physical abuse from Mr. Healey, which is patently and demonstrably false. To date, it remains unclear exactly what Defendant Gadwah's, and therefore DCF's, actual accusations are against Ms. Lowell and Mr. Healey. What is clear is that DCF and the Defendants removed the children, and refused to confer, explain, or provide any process to retrieve the children.

54. Most, if not all, of the evidence supporting these allegations was false and was fabricated by Defendants, including Defendant Gadwah.

55. To the extent that Defendants' actions were motivated by the incorrect belief that Mr. Healey was an illegal drug user due to Defendant Gadwah's previous interactions with him, those actions violated Mr. Healey's rights as a protected, recovered illegal drug user in treatment under the ADA.

56. Defendant Gadwah has engaged in similar conduct in other cases involving severing families and falsely making allegations of parents being child abusers. In 2017, Defendant Gadwah sought to cause a mother (C.B.) of a five-year-old child to give up the custody of her child on the pretext that she had failed to be at a school bus stop on a single day (in fact, she had sent a trusted neighbor). Defendant Gadwah stated that she had written an affidavit containing extensive details of child abuse and would take the child by whatever means necessary. The mother refused, based on assistance from third-party counselors who were familiar with the pattern. Defendant Gadwah later confirmed that she had never actually investigated this allegation, and the facts showed it to be false.

57. There are numerous families that have been actually separated, and parents that have been actually sanctioned as child abusers, on such flimsy bases, in cases involving Defendants Gadwah, Smith, and Carrier. There are at least several such cases currently in other district offices throughout the State of Vermont, and, on information and belief, scores in the State of Vermont in recent years.

58. When Defendants Shea, Smith and Carrier were informed of the impropriety of this specific conduct in 2017 and the prejudicial aspect of the apparently approved practice of avoiding written DCF policies and applicable law, each stated that this 2017 conduct was appropriate and would be continued. Defendant Shea, when told in specific detail of this conduct and the apparent disregard for family integrity and due process in a face-to-face

meeting, commented that “We know these families, we don’t need to investigate.” The facts of the matter were presented to the State of Vermont Attorney General in a face-to-face meeting in 2017, who indicated concern, but in later meetings indicated that nothing can be done.

59. The State Attorney General oversees a cadre of Assistant Attorneys General who are seconded to DCF and paid at least in part with federal funds. These attorneys make day-to-day business decisions for the DCF, including decisions on family separations, terminations of parental rights, and the methods and means of operation described herein. These decisions are taken with John and Jane Does within the DCF “Central Office,” many of whom were also specifically informed of the facts of Plaintiffs’ case and other cases within the St. Johnsbury DCF district.

Defendant Gadwah Violates Confidentiality Requirements and Schemes to Permanently Remove Ms. Lowell’s Custody Rights.

60. Vermont law requires strict confidentiality with respect to allegations and substantiation procedures. For example, 33 V.S.A. § 4921 requires that DCF’s records of abuse and neglect not be disseminated, and 33 V.S.A. § 5117(e) requires that records of juvenile proceedings must not be released. Specific to this matter, 33 V.S.A. § 4913(g) requires that, with respect to Investigation Files, with certain specific exceptions that were not met here, the “name of and any identifying information about either the person making the report or any person mentioned in the report shall be confidential.” *Id.*

61. Nevertheless, Defendant Gadwah, with the knowledge and support of the Defendants Smith, Carrier, Shea, and Schatz, and in a practice that was knowingly sanctioned and promoted by DCF and Defendants, contacted the fathers of Ms. Lowell’s children and told them to take the children away from Ms. Lowell. While the fathers each had joint custody of the children, Mary and Thaddeus Weld’s father was not materially engaged in parental love and

support: he had seen Mary Weld once in three years and had not seen Thaddeus Weld in three years.

62. Defendant Gadwah contacted Mary and Thaddeus Weld's father despite the fact that Mary Weld had previously reported to DCF that his wife at the time physically abused Mary and Thaddeus Weld, and that Mary and Thaddeus's father did nothing to stop or prevent the abuse.

63. Despite the requirement to maintain confidentiality, immediately after the August 10, 2018, meeting, and without conducting any substantive investigation beyond the meeting (as required by DCF Policy 57), Defendant Gadwah told the fathers of Ms. Lowell's children that Ms. Lowell was unfit to parent her children. Defendant Gadwah urged the fathers to file for sole custody of the children in their ongoing custody and support proceedings with Ms. Lowell, going so far as to ghost-write (or otherwise suggest most or all of the content of) the Motions for Emergency Relief that the fathers filed in their divorce cases in Vermont Family Court. This violation of procedure violated Ms. Lowell's constitutional due process rights, including by violating her confidentiality and actively seeking to curtail her parental rights.

64. The fathers did file for custody, in their respective public custody and support proceedings. They and Ms. Lowell attended a hearing on August 24, 2018. The court hearing had been noticed on or about August 15, 2018, just five days after the August 10, 2018, incident report and initial meeting. Defendant Gadwah also attended the hearing, which was not confidential pursuant to Vermont law.

65. In his Affidavit in support of his Motion for Emergency Relief, publicly filed with the Vermont Family Court, Mary and Thaddeus Weld's father stated that he had "just recently

found out ‘Aug. 10, 2018’ [*sic*] that the kids are being neglected and abused and also pressured and forced into doing drugs and alcohol.”

66. In his Motion for Emergency Relief, Clement Lowell’s father swore under penalty of perjury that “DCF called me and told me that the kids were taken from mother and that I was able to pick my son up,” and that “DCF told me that he is not to be with his mother.” Evidence supports that Defendant Gadwah coached the fathers on what to say in their affidavits, including the erroneous date of August 10, 2018.

67. The court indicated at the hearing that it intended to rule against the fathers’ requests for sole custody.

68. At that time, Defendant Gadwah orally told the Court (not as a sworn witness or otherwise subject to immunity) that there was a DCF investigation open against Ms. Lowell, and that “we are substantiating her [Ms. Lowell].” This action violated Vermont law, DCF’s policies and procedures regarding confidentiality, and Ms. Lowell’s due process rights, including by publicly announcing that she was under investigation by DCF prior to a substantiation decision. If Ms. Lowell had been properly substantiated, the public statement of same would also have violated Vermont confidentiality law. Defendant Gadwah’s reference to substantiation was, for all intents and purposes, a public allegation that Ms. Lowell was a child abuser.

69. At that court appearance, Defendant Gadwah scolded Ms. Nancy Jones, who runs a mentor program that Mary Weld and Thaddeus Weld attended. Ms. Jones asked a question, and was told by Defendant Gadwah to stop raising her voice, and that Defendant Gadwah did not have to answer her question.

70. The Judge at the August 18, 2018 hearing did not rule on the fathers’ request for sole custody, but scheduled another hearing for December 7, 2018. During the total time frame

from August 10, 2018, to December 7, 2018, Ms. Lowell had no ability to see any of her children. In the case of Clement Lowell, she was not allowed to speak to him during this time. Ms. Lowell was not permitted to speak to Thaddeus Weld from August 10, 2018, until August 24, 2018, and then was permitted to communicate with him only via supervised social media. Ms. Lowell was not permitted to speak with Mary Lowell from August 10, 2018, until September 13, 2018, and then was permitted to communicate with her only via social media.

71. The children suffered in substandard care, being disallowed food, toilet use, and basic parental support and affection. This caused Ms. Lowell great emotional trauma, due to her children's absence, and inability to care for them.

DCF Falsely Accuses Mr. Healey of Abuse.

72. Defendant Gadwah also made additional false allegations that Mr. Healey abused Thaddeus Weld. In fact, Thaddeus Weld received a minor scratch during a benign play accident where Mr. Healey was saying he could pick the child up and the child was light-heartedly insisting that he was too heavy and strong. Mr. Healey pulled Thaddeus Weld onto a screened-in porch during this incident, where Thaddeus Weld's back accidentally contacted a room-temperature teapot. At the time, Mr. Healey stopped the horseplay and looked at Thaddeus Weld's back, which was very lightly scratched, but fine. Thaddeus Weld's aunt and uncle witnessed this incident.

73. Defendants falsely claim that Thaddeus Weld was abused and has a permanent scar from the incident. In reaching this conclusion, Defendants did not interview Thaddeus Weld's aunt and uncle, who witnessed the incident, in violation of DCF's Rules, Policies and procedures, including Policy 68 and Rule 2007 of the Family Services Division's Rules (the

“Rules”). This violated Ms. Lowell’s constitutional due process rights, including by ignoring exculpatory evidence against Ms. Lowell and Mr. Healey.

74. There exists no picture of the supposed injury, which is described very differently at various times by Defendants, and a quick look at Thaddeus Weld’s back shows there was never a cut or scar.

Ms. Lowell Is Terminated from Her Job Due to DCF’s and Defendants’ Conduct

75. On or about September 20, 2018, as Defendants’ investigation was ongoing, Ms. Lowell was terminated from her position as a personal care specialist for an in-home care provider.

76. Upon information and belief, Ms. Lowell’s supervisor was made aware that Ms. Lowell was involved in a DCF investigation and later asked her about it.

77. Ms. Lowell truthfully told her supervisor that Defendant Gadwah had stated, including at the Vermont Family Court custody hearings, that she had been “substantiated” for child abuse.

78. Ms. Lowell was subsequently terminated from her job directly due to DCF’s false statements, which Ms. Lowell truthfully reported, and sought to correct.

DCF Issues a Substantiation Letter, Ms. Lowell and Mr. Healey Appeal, and Ms. Lowell Continues to Be Denied Custody of Her Children.

79. DCF sent Ms. Lowell and Mr. Healey letters on October 16, 2018 (the “Substantiation Letters”).

80. The Substantiation Letters state that “[b]ased on the information [DCF] gathered, [DCF] [has] determined that a reasonable person would conclude that you did place your children at risk for physical harm.” The Substantiation Letters cite “risk for physical harm” to the children, but provide no detail.

81. Under Vermont law and DCF's Rules, Policies and procedures, DCF should have visited Ms. Lowell's home to make a substantiation finding. 33 V.S.A. § 4915b; Rule 2007; Policy 52.

82. To date, DCF has never conducted a home visit at Ms. Lowell's home.

83. Under Vermont law and DCF's Rules, Policies and procedures, DCF should have conducted a full investigation to determine the "nature, extent and cause of any abuse or neglect" to make a substantiation finding. 33 V.S.A. § 4915b; Rule 2007; Policy 52.

84. DCF Policies and procedures require that "the decision to substantiate a report of child maltreatment" shall be based on "accurate and reliable information," and "pertinent information gathered during an investigation." Policy 56. In determining substantiation, DCF was required to weigh all the information "with other supporting or conflicting data." *Id.*

85. To date, DCF does not appear to have conducted any investigation of the allegations whatsoever, beyond the initial interview. DCF's representations of interviews of the children, written up days later, are specifically denied by the children and betrayed by physical evidence and third party witnesses.

86. DCF has never interviewed anyone at Ms. Lowell's home. This includes Mr. Healey's daughter, who lives with Ms. Lowell and Mr. Healey, and who would provide evidence that Ms. Lowell and Mr. Healey are not abusive and do not use drugs.

87. DCF does not appear to have interviewed Ms. Lowell's children since the initial report on August 10, 2018. If asked, Mary Weld would provide evidence that her initial allegation against Ms. Lowell was not true, and that her initial allegation did not contain any basis relating to many of the allegations found in the Redacted Investigation Files.

88. During this time, Ms. Lowell repeatedly called certain Defendants, including Ms. Gadwah, and begged them to send her children back to her. She also begged them to investigate the claims against her, because those claims were simply not true.

89. DCF never interviewed witnesses, such as Thaddeus Weld's aunt and uncle, who could provide pertinent information regarding the allegations.

90. On November 7, 2018, DCF sent Ms. Lowell a boilerplate letter that advised her of the possibility of staying or postponing the appeal of the substantiation determination. The letter also contains a short and unclear list of procedures for the Substantiation Hearing.

91. The letter states that Plaintiffs "can ask" to bring someone to the hearing, but that the "reviewer will decide who can present information at the meeting."

92. The letter forbids Plaintiffs from bringing "people identified as victims of the abuse or neglect to the meeting, if they are still a minor."

93. The letter expressly states that, if no DCF representative is available to attend, "the reviewer will seek the department's input afterwards." Doing so is a common practice after Substantiation Hearings and is inherently *ex parte*. There is no indication in the letter that Plaintiffs would be informed of this input or have the right to review or contest any such input. In fact, it is well known that DCF provides rebuttal to what accused parties say to defend themselves, after the hearing, and the accused is never informed or provided a chance to respond.

94. As recently as May 2019, Defendant Greenmun demonstrated in a separate hearing that this is a method used by Substantiation Hearing Officers and DCF.

95. Ms. Lowell and Mr. Healey filed timely requests for review of DCF's substantiation determinations in accordance with 33 V.S.A. § 4916a.

96. Despite representations otherwise, including those made by Defendant Clark in her August 22, 2019, letter to counsel,⁴ DCF's Substantiation Hearing Officers regularly receive an *ex parte* briefing by DCF and a perusal of the full file that DCF has compiled (which often contains inaccurate or groundless accusations and conclusions) on the accused, giving no notice of these prejudicial accusations.

97. As recently as May 2019, Defendant Greenmun revealed in passing in a Substantiation Hearing for other accuseds (that was supposedly cabined to the information in the Redacted Investigations File) knowledge of details of extrinsic matters that were never properly disclosed. This belies the DCF's claims about the procedure, which is explicitly stated by DCF in its "CRRU Procedures and Guidance" to include instructions "After the meeting...The need to gather missing pieces of information (evaluations, court decisions, police reports, case notes, etc.) is often necessary. Review the individual databases for the courts (VCAS), DCF's post-2003 info (FSDNet), and DOC [Department of Corrections]." These methods are prejudicial and violate Plaintiffs' constitutional due process rights, including by denying them access to the evidence that supports the Substantiation Hearing Officer's decisions.

98. Under Vermont law, DCF "shall hold an administrative review conference within 35 days of receipt of the request for review." 33 V.S.A. § 4916a; Rule 3009.01.

99. However, Substantiation Hearings for Ms. Lowell and Mr. Healey did not occur within 35 days of the request for review, as required by Vermont law. Indeed, no Substantiation Hearings have occurred to date, more than 9 months later. DCF regularly defaults accused

⁴ In that letter, Defendant Clark stated that if the Substantiation Hearing Officer "reaches out" to DCF personnel for "clarification or further information after the [Substantiation Hearing]," that Plaintiffs "will then be advised of that additional information and given an opportunity to respond." The claim about informing the accused is a falsehood, which is revealed by explicit provisions of DCF's published "Procedures" that allow file review and interviews of DCF staff after the hearing is closed. In recent months, DCF reviewers have also revealed that this *ex parte* inquiry, without disclosure after the hearings, is part of how they conduct reviews.

parties who do not contest the accusation within 14 days, and regularly defaults accused parties who do not receive notice, send in their contest papers a day late, or have their notice of contest “lost” by the DCF.

100. Under Vermont law and DCF Rules, if “the [Substantiation Hearing Officer] accepts the Department’s substantiation determination, a Registry record *shall be made immediately*.” 33 V.S.A. § 4916a, Rule 3009.06.

101. The accused has a right to appeal the results of the Substantiation Hearing to the Human Services Board, but the Registry entry is already made, and is permanent for the accused’s lifetime. 33 V.S.A. § 4916a. Rule 3009.08 requires that the Registry entry note the appeal, but does not stay the entry during the appeal process. Rule 3009.08.

102. On December 7, 2018, a different Vermont Family Court judge conducted the previously-scheduled custody hearing for Ms. Lowell’s children in the divorce actions. The judge held that the children should stay with their respective fathers until the DCF matter was resolved. Ms. Lowell was allowed limited visitation.

DCF Ignores Ms. Lowell and Does Not Schedule a Substantiation Hearing.

103. Ms. Lowell was not allowed to visit her children at all until December 2018, when she was permitted to see Clement Lowell. In March 2019, she was permitted to see Mary and Thaddeus Weld. Defendant Gadwah told Ms. Lowell and Mr. Healey that they could not ask the children how they are being treated or anything about the case, in violation of DCF’s Policies and procedures. *See* Policy 98. This violation of procedure also violated Ms. Lowell’s constitutional rights, including by limiting her parental rights and preventing her from obtaining evidence for her defense, and to reunify her family.

104. Ms. Lowell contacted DCF on multiple occasions in late 2018 and 2019 and was told repeatedly that DCF had no record of an open case file on her. On other occasions, DCF personnel, including Defendants, simply refused to speak with her. These interactions took place repeatedly, over the course of months, at a time when Ms. Lowell had been involuntarily separated from her children and was fighting for custody, against DCF instigating and assisting an effort to strip her of custody.

105. In or about January 2019, Defendant Smith told Ms. Lowell that “we didn’t take your children.” When Mr. Healey told Defendant Smith that she could not properly take the children without any paperwork or legal process, Defendant Smith told him that she did not know anything about the case, but that Ms. Gadwah “probably had a good reason to do it,” referring to the substantiation decision and the removal of Ms. Lowell’s children from her home. Despite repeated attempts to communicate with Defendants Smith, Carrier and Gadwah, there was no response as to how and why the children had been removed, or what could be done to return the children.

106. In early 2019, the Commissioner’s Review Unit of DCF told Ms. Lowell that they were awaiting the file from the District Office, which had previously told Ms. Lowell that they did not have a file. This incident occurred several months after Ms. Lowell was supposed to have had a Substantiation Hearing.

107. Through March of 2019, Ms. Lowell was not contacted by Defendants, other than the Substantiation Letters, and the November letter. DCF appears to have closed the investigation of Ms. Lowell and supposed child abuse in or about October 2018, when it issued the Substantiation Letters.

108. On June 10, 2019, the Vermont Family Court, in the Weld custody and support proceeding, ordered that Mary and Thaddeus Weld be returned to Ms. Lowell. They were separated from their mother for 305 days.

109. On July 31, 2019, the court in the Lowell divorce proceeding ordered that Clement Lowell be returned to Ms. Lowell. He was separated from his mother for 356 days.

110. Ms. Lowell had no contact at all with Clement Lowell for 123 days, from August 10, 2018, until December 10, 2018. She had limited, supervised visitation with him for 234 days, from December 10, 2018, until July 31, 2019. She was not permitted to communicate with him at all during this period, other than during the supervised visits.

111. Ms. Lowell had no contact at all with Thaddeus Weld for 15 days, from August 10, 2018, until August 24, 2018. She could communicate with him only via supervised social media for 208 days, from August 24, 2018, until March 19, 2019. She had no visitation with him for 204 days, from August 10, 2018, until March 1, 2019. She had limited, supervised visitation with him for 102 days, from March 1, 2019, until June 10, 2019.

112. Ms. Lowell had no contact at all with Mary Lowell for 35 days, from August 10, 2018, until September 13, 2018. She could communicate with her only via social media for 96 days, from September 13, 2018, until December 17, 2019. She had no visitation with her for 218 days, from August 10, 2018, until March 15, 2019. She had limited, supervised visitation with him for 88 days, from March 15, 2018, until June 10, 2019.

113. The forced separation that Defendants imposed on Ms. Lowell and her children, based on false information and a shoddy, basically non-existent investigation; the terror of not knowing when, or whether, her children were ever going to be returned; and the stigma and

shame of being falsely and publicly labelled as a child abuser by a state official, inflicted extreme emotional distress on Ms. Lowell, as it would on any falsely accused person.

DCF and Defendant Gadwah Coerce Ms. Lowell into Taking Suboxone for No Reason.

114. Ms. Lowell is in her mid-thirties. When she was 16 and 17, she had problems with drug use. She has been drug-free since then, approximately 18 years.

115. Nevertheless, Defendant Gadwah told Ms. Lowell that, because she is a recovered drug user, she needed to be in a Medication Assisted Treatment program (“MAT”) if she wanted to be with her children, whom Defendant Gadwah had taken away. Defendant Gadwah told Ms. Lowell that she knew that Mr. Healey had used suboxone, and therefore “you must be doing it too,” which was false. Defendant Gadwah compelled Ms. Lowell to enter MAT and to take suboxone, despite the fact that Ms. Lowell had not used drugs for 18 years, and in the absence of any medical evaluation. Defendant Gadwah told Ms. Lowell that her only chance of seeing her children was to do what Defendant Gadwah and DCF told her to do, including submitting to MAT.

116. On August 10, 2018, when confronted by Defendant Gadwah with false accusations of being a drug user, and when Defendant Gadwah told Ms. Lowell that she was taking her children away due to the false charge of drug abuse, Ms. Lowell immediately offered to provide Defendant Gadwah with a urinalysis. Defendant Gadwah told her that she, and presumably DCF, required a urinalysis through a MAT clinic, only after Ms. Lowell was taking suboxone (which, of course, would show opiate use).

117. Suboxone is a potentially dangerous substance consisting of buprenorphine (a semi-synthetic opioid) and naloxone (an opiate blocker).⁵ In effect, Defendant Gadwah

⁵ See Highlights of Prescribing Information, February 2008, <https://www.suboxone.com/pdfs/prescribing-information.pdf>.

compelled a non-drug user who had successfully recovered to start taking drugs, if she wanted to have any hope of being reunited with her children.

118. Long-term suboxone users can experience an array of side effects. According to the Substance Abuse and Mental Health Administration at the U.S. Department of Health and Human Services, these side effects are “similar to those of opioids” and can include nausea; vomiting; constipation; muscle aches; cramps; cravings; inability to sleep; distress and irritability; and fever. *See* Substance Abuse and Mental Health Services Administration. (2016). Buprenorphine. <https://www.samhsa.gov/medication-assisted-treatment/treatment/buprenorphine>.

119. Not only can suboxone cause these negative side effects, the United States Drug Enforcement Administration has stated that “[l]ike other opioids commonly abused, buprenorphine [suboxone] is capable of producing significant euphoria. Data from other countries indicate that buprenorphine has been abused by various routes of administration (sublingual, intranasal, and injection) and has gained popularity as a heroin substitute and as a primary drug of abuse.” *See* United States Drug Enforcement Agency, Diversion Control Division, Drug & Chemical Evaluation Section. “*BUPRENORPHINE*.” https://www.deadiversion.usdoj.gov/drug_chem_info/buprenorphine.pdf (July 2019).

120. Defendant Gadwah appeared to assume that Ms. Lowell was abusing drugs because Mr. Healey had used suboxone previously, a fact Defendant Gadwah knew from her prior investigation involving the mother of Mr. Healey’s children. At that time (2018), Mr. Healey had not used drugs, other than for clinical treatment, for eight years, including during the time Defendant Gadwah conducted her previous investigation.

121. Defendant Gadwah forced Ms. Lowell and Mr. Healey to take suboxone in order to get Ms. Lowell's children back, despite the fact that neither of them was illegally using drugs. She did this by directly stating that they would not get Ms. Lowell's children back unless they took suboxone.

122. Ms. Lowell has had regular urinalysis since August 2018. She has never tested positive for any drug (except the drug that MAT entails).

123. Mr. Healey has had one positive test (for a prescription drug), but no other positive results, despite being tested throughout 2018 and 2019.

124. Ms. Lowell is currently weaning herself off of suboxone, with the assistance of counselors. In effect, she is reducing the "treatment" with an addictive drug that was never needed. Mr. Healey is scheduled to end suboxone use on August 31, 2019.

125. DCF's actions, including those of Defendant Gadwah, discriminated against Plaintiffs on the basis of DCF's erroneous presumption of illegal drug use, despite the fact that they had been rehabilitated long ago and were no longer engaging in illegal drug use.

***DCF Is Repeatedly Notified of Due Process Violations and
Improper Conduct, but Continues to Delay.***

126. DCF has been provided fair and ample warning of the ongoing due process violations.

127. Defendants Schatz and Shea have been specifically informed, before August 2018, that DCF was severing families due to false, implausible, and uninvestigated reports of abuse or neglect; implausible and uninvestigated claims of parental drug use; and reports of parents seeking legally-protected drug treatment who were otherwise safe.

128. Despite DCF policies that explicitly state, in accord with State and federal law, including Title IV-E of the Social Security Act, that DCF will only remove a child "as a last

resort,” DCF, and Defendants Schatz and Shea, were specifically informed that DCF was removing children on flimsy pretexts, refusing to investigate, and violating Vermont families’ civil rights.

129. Both Defendants Schatz and Shea stated their serious concern about these claims, indicated that they would investigate, and then came back to state, without any response to the particulars, that DCF is acting properly to protect families.

130. Defendants Schatz and Shea directed their Waterbury, Vermont “Central Office,” where some of Defendants John and Jane Does make decisions to remove children from their families, and the District Directors and supervisors, including Defendants Carrier and Smith, that they should remove children in all such instances, because DCF had been publicly vilified for negligently allowing two children to be murdered by abusive adults in 2014.

131. Defendants Schatz, Shea, Carrier, Smith, Johnson, and Does are fully aware that such unwritten policy contradicts the DCF’s Policies *seriatim*, and State and federal law, including due process, but have determined to make a policy decision to do so. Defendant Schatz has stated, when asked about why he is allowing families to be severed on such groundless reasons, “My job is to protect children,” and refuses to explain why he seeks to accomplish that job absent adherence to due process.

132. Defendant Schatz has explicitly stated that he believes that the Americans with Disabilities Act does not protect Vermont residents against the improper seizure of children, and termination of their parental rights which contradicts the public position of the U.S. Department

of Justice and the U.S. Department of Health and Human Services, Civil Rights Division, Office for Civil Rights, as well as applicable federal case law.

133. On February 26, 2019, counsel for Plaintiffs wrote the Vermont Attorney General and informed him that DCF was committing “[m]ajor violations of due process and other constitutional violations.” He explained that DCF “is severing families, denying due process, and damaging or destroying the most foundational bonds that are at the core of the Constitutional rights protected by the United States and Vermont Constitutions.”

134. The letter explained that the violations included:

- Refusing access to files showing how and why DCF has removed children from their parents (such as Ms. Lowell);
- “Blocking individuals from investigating false claims, perjury, suppression of exculpatory evidence, or just garden-variety violation of their rights”;
- “[A]voiding careful work, like interviews and investigations, in favor of running to court with ‘emergent’ claims, often misleading, luridly exaggerated, or even made-up;
- “currently disregarding [DCF’s] own rules and the constitutional principles that are required by those rules”; and
- “The DCF either gets custody or extracts concessions that effectively give it control of families in invidious ways, for years on end.”

135. Counsel then explained the specifics of Ms. Lowell’s case in detail.

136. Despite this letter, DCF has consistently refused to cooperate in returning Ms. Lowell’s children to her, or even communicating how or why they had been removed. DCF’s refusal to act extended the delay in returning Ms. Lowell’s children, and caused those children trauma for which they receive counseling. This delay and disregard for established rights has been continued by Defendants Johnson, who was specifically informed of Ms. Lowell’s family separation, and has taken no steps to end it or mitigate the effects.

137. Also on February 26, 2019, counsel for Ms. Lowell requested the case file from Defendant Carrier and David Kennedy, counsel for DCF, via email. Ms. Lowell's counsel stated that "there have been significant irregularities in regard to Ms. [Lowell], including several that have caused her and her family significant harm. These are continuing, and time is of the essence in her procuring information in order to protect her rights and mitigate harm."

138. In a follow-up email that same day, counsel for Ms. Lowell further explained that "DCF has interfered with, and severed her family, doing so however by avoiding initiating any CHINS [Child in Need of Care or Supervision]⁶ action. It merely has bypassed all of its own Policies and due process to effect the outcome of taking her children away (among other, improper things)."

139. Also on February 26, 2018, counsel for Mr. Healey requested that Ms. Carrier, Mr. Kennedy, and DCF produce a copy of Mr. Healey's case file. The email also explained that "DCF has taken action [against Mr. Healey] . . . by circumventing the proper legal means and due process."

140. No files were produced to either Plaintiff as a result of these communications.

141. On June 10, 2019, counsel for Ms. Lowell again requested the case file from Defendant Shea, then reiterated the request to Defendant Johnson on June 12, 2019. Neither Defendant responded.

The State of Vermont Has Taken Consistent Recent Positions that Separating Children from Their Families is Illegal and Harmful to Both Parents and Children

142. Months before Defendants removed Ms. Lowell's children from her home without cause and absent investigation, procedure or process, the State made multiple public statements, including in a United States District Court, that family separation without certain

⁶ CHINS actions are described in 33 V.S.A. § 5102, *et seq.*, Policy 52 and 60.

predicates is “illegal,” “contrary to public policy,” and causes serious harm to both parents and children.

143. In a letter, dated June 19, 2018, to the Attorney General and the Secretary of Homeland Security, Thomas J. Donovan, Vermont’s Attorney General, joined other state Attorneys General in explaining that a:

child’s best interests are served by remaining with his or her family, absent a rigorous judicial inquiry resulting in a finding that a parent is unfit or proof beyond a reasonable doubt that a crime has been committed. **Policies that separate a child from his or her parent absent that level of inquiry, would not only be illegal under most state laws,** but also may be contrary to the policy views of state legislatures and their constituents across this country.

(emphasis added).

144. In *State of Washington v. United States of America*, No. 2:18-cv-00939 (W.D. Wash. Jun. 26, 2018), the State of Vermont explained that:

- “Vermont authorities owe a corollary duty ‘to preserve the family and to separate a child from his or her parents only when necessary to protect the child from serious harm or in the interests of public safety.’” *Id.*, Complaint ¶ 199 (quoting 33 V.S.A. § 5101(a)(3)).
- “Separating families when a child’s safety is not at risk causes immediate, acute trauma as well as foreseeable long term damage and harm to both the parents and the children.” *Id.* ¶ 107;
- For children, “forced separation from their parents is likely to cause immediate and extreme psychological harm to young children, and the resulting cognitive and emotional damage can be permanent.” *Id.* ¶ 108;
- For parents, “it is traumatic to be separated from their children suddenly without the chance to prepare the child or even say goodbye.” *Id.* ¶ 111;
- The American Association of Pediatrics has explained that “[s]eparating children from their parents contradicts everything we stand for as pediatricians – protecting and promoting children’s health. In fact, highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her health. This type of prolonged exposure to serious stress - known as toxic stress - can carry lifelong consequences for children.” *Id.* ¶ 159;

- “State residents who are parents have a fundamental liberty interest in the care, custody, and control of their children.” *Id.* ¶ 343;
- “State residents who are minors have a reciprocal liberty interest in their parents’ care.” *Id.* ¶ 344; and
- “State residents who are minors have a right to be free of unreasonable risk of harm, including trauma from separation” *Id.* ¶ 345.

145. The DCF has numerous, written Policies that all employees are supposed to be trained with. Per Policy 11, these Policies “state[] the statutory, federal guidelines and procedure that must be adhered to by Family Services division [sic] staff.” These Policies make clear that no child is to be removed from a home or parental custody without exhaustive efforts to find solutions, maintain family custody, and make accommodations and adaptations. Then, if and only if strictly necessary for genuine and immediate safety reasons, the briefest necessary separation may be permitted, in accord with due process and respect for family integrity. Per Policy 11, “Separating children from their families is traumatic and should be seen as a last resort.”

146. Despite these lucid statements of governing law and principle, DCF and the Defendants have, over the course of years, systematically torn families in Vermont apart in needless situations, as they have here in this case, through the use of unconstitutional procedures and their repeated, knowing violations of the clearly-established rights of parents and children.

***DCF Finally Schedules Substantiation Hearings and
Produces the Redacted Investigation Files.***

147. On June 24, 2019, DCF’s Commissioner’s Registry Review Unit sent Ms. Lowell and Mr. Healey letters scheduling their Substantiation Hearings for August 28, 2019. The letters note that Defendant Greenmun is the Substantiation Hearing Officer.

148. The letters were sent with a copy of each Plaintiff’s Redacted Investigation File.

149. The Redacted Investigation Files are heavily redacted. The redactions are so extensive that it is impossible to determine the actual charges against Plaintiffs, or the evidence, including the source of the evidence, that supports the charges.

150. Mr. Healey's Redacted Investigation File appears to allege that Mr. Healey caused a serious injury and permanent scarring to Thaddeus Weld's back from a severe incident on the porch.

151. One part of the Redacted Investigation File states that the scar is on the "lower hand [*sic*] side of his back."

152. Another portion of the Redacted Investigation File states that the scar is "a long scar down the center of his back."

153. There is no scar on Thaddeus Weld's back.⁷ The scar allegations were fabricated.

154. The Redacted Investigation File does not contain a picture of this alleged scar.

155. There is no indication in the Redacted Investigation File that anyone from DCF, including any Defendant, looked at Thaddeus Weld's back prior to including these inconsistent and false allegations in the Redacted Investigation File.

156. In Ms. Lowell's Redacted Investigations File, Defendant Gadwah admits to contacting Ms. Lowell's ex-husbands and urging them to file for custody. This contact violates the confidentiality requirements of 33 V.S.A. § 4913(g).

157. The Redacted Investigations Files show that Defendant Gadwah made the determination to "substantiate," Ms. Lowell for child abuse and neglect, which was then approved by Defendant Smith.

⁷ This summer (2019) Thaddeus was scraped on a wholly separate part of his back due to the normal activity of a 14-year old boy in basketball game.

158. Ms. Lowell's Redacted Investigation File contains the accusation that Ms. Lowell and Mr. Healey forced Mary Weld to drink alcohol and smoke marijuana (an allegation that Ms. Lowell, Mr. Healey, and the children all deny). Ms. Lowell and Mr. Healey were not aware of this allegation until they reviewed the Redacted Investigation File. These allegations are untrue and were fabricated, likely by Defendant Gadwah. Mary Weld is 17 years old and desires to refute this falsehood – both that it happened, and that she said it.

159. Ms. Lowell's Redacted Investigation File contains the accusation that unnamed friends of Ms. Lowell and Mr. Healey forced alcohol on Mary Weld. Ms. Lowell and Mr. Healey were not aware of this allegation until they reviewed the Redacted Investigation File. These statements are untrue and were fabricated, likely by Defendant Gadwah. Mary Weld is 17 years old and desires to refute this falsehood – both that it happened, and that she said it.

160. Mary Weld has indicated that she would testify, if permitted, that the allegation regarding the crushed-up pill that she made against Ms. Lowell is not true, and that she did not make any of the other allegations contained in the Redacted Investigation File, indicating that Defendants, likely Defendant Gadwah, willfully and intentionally fabricated evidence.

161. The Redacted Investigation Files for both Plaintiffs ignores exculpatory evidence, including the fact that there is no scar on Thaddeus Weld's back, and that Mary Weld would refute the DCF's claim and testify that the incorrect information that she previously provided does not match the reporting of that information in the Redacted Investigation File.

162. The Redacted Investigation Files also ignore any exculpatory evidence that would have been obtained on a home visit or through interviews with Ms. Lowell, Mr. Healey, or Thaddeus Weld's aunt and uncle, because the visit and those interviews never occurred. It does

not contain a recording of the interviews that would verify the allegations, because no recording of the interviews was made.

The Substantiation Hearing's Flawed Procedures.

163. Vermont law tasks the Substantiation Hearing Officer with “making the most accurate decision regarding the allegation” of abuse. 33 V.S.A. 4916a. The flawed and unconstitutional procedures used at Substantiation Hearings make it nearly impossible to make such an accurate decision.

164. The first issue is the lack of legal standards applicable to the hearings. Plaintiffs have received no materials indicating what the hearing will determine, and the actual course of such hearings in the recent past reveals a significant difference of opinion among Substantiation Hearing Officers as to legal standards. In one recent hearing (for another party), the Substantiation Hearing Officer stated that the proceeding is not about the truth of the allegation, but only whether the DCF followed its own Policies. In another, the Substantiation Hearing Officer stated that the proceeding is not about the truth of the allegation, but only whether “a reasonable person could [have] believe[d]” that it was true. A Substantiation Hearing Officer has also recently stated that the proceeding is about “what I decide”; when asked what that means, he indicated that he would decide what he felt was right after he had heard out the accused husband and wife, and, when they had left, he had walked to a different part of the building to ask DCF staff what it thinks and can show him in all of its files. Despite Plaintiffs’ original notifications of substantiation indicating that coming, written materials will explain the process and standards, no such materials have ever been provided.

165. Vermont law and DCF’s Rules require Ms. Lowell and Mr. Healey to be provided with a copy of the Redacted Investigations File. 33 V.S.A. § 4916a; Rule 3009.02. The files that

Ms. Lowell and Mr. Healey received are so heavily redacted that it is impossible to see what evidence or information that DCF relied on to make its determination. Indeed, the file is so heavily redacted that it is impossible to determine the precise allegations against Ms. Lowell and Mr. Healey.

166. Vermont law and DCF's Rules state that there is no subpoena power to compel witnesses to attend, including witnesses, such as Defendant Gadwah, whose credibility would be required to be assessed by the Substantiation Hearing Officer. 33 V.S.A. § 4916a; Rule 3009.02.

167. Unlike the Plaintiffs, the Substantiation Hearing Officer has access to the unredacted Investigation File. This means that the accused is being charged with material that is secret, that he or she does not even know about. Useful evidence, useful witnesses, and exculpatory facts known to DCF are occluded, preventing the accused from understanding the charges and the support for them.

168. The Substantiation Hearing Officer also has access to the entire "case files" for the Plaintiffs. These are exhaustive dossiers that DCF keeps of every accusation, every inquiry, every communication in regard to a person and all members of his or her family, in the encyclopedic, multidecade "FSDNet" database. Plaintiffs do not have access to those files and have not been informed as to their contents, many of which are inflammatory or false.

169. Plaintiffs would be, under the DCF process, unable to present evidence in their defense in the form of three key witnesses to the supposed abuse, the children. In particular, DCF's procedures prevent Ms. Lowell and Mr. Healey from presenting evidence that Thaddeus Weld does not have scarring on his back, which directly rebuts evidence of abuse cited in Mr. Healey's Redacted Investigations File. Nor may they present the credible testimony of Thaddeus Weld that the event never happened, and that he never said it happened. Ms. Lowell cannot

compel the testimony of Thaddeus Weld's aunt and uncle, who could confirm the details of the horseplay incident and that the scratch that Thaddeus Weld suffered was minor at the time of the incident.

170. Ms. Lowell and Mr. Healey are unable to present testimony from Mary Weld, who would testify that the original allegation against her mother (a vague reference to snorting a pill) was false.

171. Ms. Lowell and Mr. Healey are unable to cross-examine the investigator and other witnesses whose credibility the Substantiation Hearing Officer would be required to determine in reaching her conclusions.

172. Under DCF's Rules, Policies and procedures, *ex parte* communication between the Substantiation Hearing Officer and DCF officials is permitted and is normal procedure. Ms. Lowell and Mr. Healey would not know about, and therefore cannot contest, challenge, or present contrary evidence to, any *ex parte* statements that any DCF officials make to the Substantiation Hearing Officer.

173. In November of 2018, DCF was placed on notice by the Vermont Supreme Court that this practice violated "the baseline of due process" that the legislature intended for Substantiation Hearings:

Nothing in the statutory scheme, or the DCF regulatory scheme concerning the administrative review process, allows for the administrative reviewer to have *ex-parte*, extra-record contact with DCF caseworkers concerning the subject of the substantiation review. . . . The apparent custom followed by defendant and cited in defendant's brief creates a situation where, as here, the administrative-review decision is at least partially based on extra-record evidence about which the subject has no notice or opportunity to respond. This appears to be inconsistent with the applicable statutory and regulatory protections of the subject. If this is truly an accepted custom at DCF, the Department should review its policies and practices in light of the applicable law.

Sheldon v. Ruggiero, 2018 VT 125, ¶ 8 n.3 (Vt. 2018) (citations omitted).

174. If the Substantiation Hearing Officer were to accept DCF's substantiation determination, Ms. Lowell would be permanently placed on the Registry within seven days of the decision. *See* 33 V.S.A. § 4916a(g). The information on the Registry is available to various members of the public, including employers and agencies that sponsor volunteers. In addition to the potential loss of custody of her children and the stigma of being labelled an abuser, placement on the Registry would alter Ms. Lowell's legal status and deprive her of freedom of employment or to volunteer as she chooses.

175. Since 2014, the first year in which DCF can provide reliable data regarding the number of Registry checks that have been performed, more than 50,000 checks per year have been performed. Specifically, DCF indicated that the number of checks processed for inquiries per year were: 54,301 in 2014; 57,303 in 2015; 56,892 in 2016; and 53,497 in 2017. This number does not include "requested self-checks."

176. Such self-checks may actually increase the numbers of overall employers or other members of the public who have access to the Registry, because the State's official website promotes the idea of having individuals on the Registry procure and send to out-of-state employers, via self-check, notarized copies of their Registry entry. *See* <https://dcf.vermont.gov/protection/registry/out-of-state> ("How do I request a search?" section outlines procedures to ask potential employee to request a notarized self-check that is returned via self-addressed stamped envelope (made out the employer) to the out of state employer). This practice that could be used by other individuals in other contexts as well.

Defendants Admit, Among Other Things, that the Hearing Is "Not Fair."

177. On August 14, 2019, counsel for Plaintiffs wrote Defendants Clark and Schatz and asked them to "defer the [Substantiation Hearings] and confer about how to correct the

process,” to allow for compliance with constitutional requirements. Since at least ten months before that time, Defendants Schatz and Clark were specifically on notice that the hearing process needed to comply with federal due process requirements, and that it did not, including contradicting clearly established federal due process case law.

178. The letter again noted the lack of information in the Redacted Investigation Files, and the fact that the Substantiation Hearing Officer would have access to additional information.

179. Counsel explained that “[o]f course, due process requires that one not be accused of something of this magnitude in secret, without ample opportunity to examine and address the putative evidence that the decisionmaker will be accessing,” and that Plaintiffs have a right to some form of cross-examination of “the investigator, the witnesses, and the authors” of the documents in the file, since the factfinder’s decision relies on the credibility of those documents.

180. Counsel yet again explained the myriad of procedural issues related to the Substantiation Hearing. He also, yet again, alerted Defendants Clark and Schatz to the possibility of exculpatory evidence residing in DCF’s possession.

181. Defendant Clark responded by letter on August 22, 2019.

182. She admitted that the Substantiation Hearing Officer would have access to the complete file, documents that Plaintiffs do not have access to and have never seen.

183. She admitted that the Substantiation Hearing Officer could engage in *ex parte* communications, but then claimed that, contrary to normal custom and practice, that Plaintiffs would be notified and given the opportunity to respond. This statement is not in accordance with normal custom or practice, and is completely impractical, if not impossible, given the level of redaction in the materials that Plaintiffs have been permitted to access. In addition, Plaintiffs have no way of knowing if such *ex parte* communications occur.

184. In fact, Defendant Greenmun, as recently as May 2019 (in a separate hearing) claimed that she had no such extra-record material, but revealed inadvertently that she had reviewed extensive such materials.

185. In a refreshing admission, Defendant Clark, the director of Commissioner Schatz's Registry Review Unit, flatly stated:

We also wanted to clarify for you that ***the review meeting is not a fair hearing*** and is not held before a hearing officer.

(emphasis added).

186. Defendant Clark said that Plaintiffs would have the opportunity to dispute the Substantiation Hearing officer's decision, if upheld, to the Vermont Human Services Board. She claimed that this later hearing is a "*de novo* fair hearing." In actual fact, DCF has repeatedly referred to the "review meeting" as a hearing, and a fair one. It is the last stop before the permanent listing of an accused on a list of child abusers, which is a significant deprivation, involving material sanction and stigma. The fact that a *de novo* hearing in another body is later available, possibly, to reverse the effect of the deprivation, is not sufficient pre-deprivation due process.

187. What Defendant Clark omitted in her letter is that, if the Substantiation Hearing Officer upholds the substantiation decision, based on the findings at what DCF admits is "not a fair hearing," Plaintiffs will be placed on the Registry within 7 days, well before the purported "fair" hearing would occur. By Defendant Clark's own admission, Plaintiffs will be deprived of liberty and property without due process of law.

188. All of the Defendants have been fully aware of DCF's use of all of the procedures described above. They have consistently created, supported, upheld and, where applicable, required their subordinates to apply, these procedures, including against Plaintiffs.

189. In addition to their personal involvement in the deprivation of Plaintiffs' rights, Defendants have, even after being placed on notice of these particular violations, and the impropriety of family separation in general: (i) failed to remedy the wrongs inflicted on the Plaintiffs; (ii) created, implemented and maintained policies or customs that allowed the violations to take place; (iii) were, where applicable, grossly negligent in supervising subordinates who violated Plaintiffs' rights; and (iv) exhibited deliberate indifference to Plaintiffs' rights by failing to act on the notice that they were provided to prevent plaintiffs' rights from being violated.

CAUSES OF ACTION

COUNT I

Declaratory Judgment – Violation of Due Process Provisions of United States and Vermont Constitutions: Procedural Due Process (Against All Defendants) (By Plaintiffs Lowell and Healey)

190. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

191. This Count is brought against Defendants in their official capacities for declaratory and injunctive relief.

192. The Fifth Amendment to the United States Constitution, made applicable to the State of Vermont by the Fourteenth Amendment, provides that no person shall "be deprived of life, liberty, or property, without due process of law."

193. The Fourteenth Amendment to the United States Constitution provides that no state shall deprive "any person of life, liberty, or property, without due process of law."

194. Section 1983 of Title 42 of the U.S. Code provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities

secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

195. Chapter 1, Article 4 of the Vermont Constitution guarantees that:

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; conformably to the laws.

196. Chapter 1, Article 9 of the Vermont Constitution guarantees that “every member of society hath a right to be protected in the enjoyment of life, liberty, and property.”

197. Chapter 1, Article 10 of the Vermont Constitution guarantees that no person can “be justly deprived of liberty, except by the laws of the land.”

198. These Due Process Clauses of the Vermont and United States Constitutions are implicated by Defendants’ decisions and actions related to Ms. Lowell’s custody of her children and her rights to familial association, bodily integrity and privacy, including: (i) an initial substantiation that was made using inadequate procedures, used false and fabricated evidence and ignored exculpatory evidence; (ii) extrajudicially removing Ms. Lowell’s children from her home and custody without using any procedure, prior to any investigation; (iii) violating confidentiality requirements and Ms. Lowell’s rights by informing Ms. Lowell’s former husbands and the Vermont Family Court of DCF’s investigation and that Ms. Lowell was “being substantiated” during that investigation; (iv) forcing Ms. Lowell and Mr. Healey to enter drug treatment programs, undergo urinalysis testing for drugs, and take the anti-addiction opiate suboxone, in order to return Ms. Lowell’s children to their mother; and (v) causing Ms. Lowell to lose her job and damaging her and Mr. Healey’s good names and reputations.

199. These Clauses are also implicated by the flawed procedures at the Substantiation Hearing, which would result in further damage to Ms. Lowell and Mr. Healey’s good names and

reputations. Because they will be deprived of liberty interests, including the right to familial association and employment opportunities, they are entitled to due process protection, which entails, at minimum, notice of the charges against them, and the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The procedures at the hearing fail to provide that minimum level of due process.

200. Defendants, acting in their official capacities, have a constitutional obligation to provide a fundamentally fair and reliable hearing process. Defendant Clark admits that the Substantiation Hearing “is not a fair hearing.”

201. Defendants, acting in their official capacities, have an additional obligation under Vermont law and DCF’s Rules, Policies and procedures to have conducted a full investigation to determine the “nature, extent and cause of any abuse or neglect” that is based on “accurate and reliable information” and to weigh all the information, including “conflicting data.” 33 V.S.A. § 4915b; Rule 2007; Policy 52, 56. They are also required to provide a Substantiation Hearing process that is conducted within 35 days and fairly evaluates the initial substantiation decision, which includes recognition of the basic due process rights of parents accused of child abuse, drug abuse, or other misconduct.

202. Defendants acted knowingly, with disregard for the Plaintiffs’ clearly established constitutional rights, of which a reasonable person would have known, in pursuing an improper and unconstitutional substantiation process, including a Substantiation Hearing, and consenting to, directing, establishing, and enforcing the improper and unconstitutional procedures that were used in the substantiation process and would be used at the Substantiation Hearing. Despite

knowing that the procedures were flawed, Defendants failed to remedy them, and allowed the flawed procedures to continue, exhibiting deliberate indifference to Plaintiffs' rights.

203. Those Defendants who hold supervisory positions have actively participated to violate Plaintiffs' rights, or acted with gross negligence or deliberate indifference in supervising subordinates who repeatedly committed these wrongful acts, and similar wrongful acts against other families, despite knowing that these wrongful acts were occurring.

204. Defendant Clark has expressly stated to counsel for Ms. Lowell and Mr. Healey that Substantiation Hearings are "not a fair hearing." Defendants are aware of this fact and have done nothing to remedy the improper procedures, and instead have created, implemented and directed the execution of these improper procedures. Because the Substantiation Hearing will deprive Plaintiffs of their liberty, in ways that have serious, life-long consequences, including placement on the Registry and the change in legal status that accompanies that placement, Plaintiffs have a constitutional right to a fair hearing that allows them to know the charges against them, to know the evidence against them, and to be able to present a defense.

205. Plaintiffs are entitled, under the Constitutions of the United States and Vermont, as well as under Vermont law and DCF Rules, Policies and procedures, to the opportunity to be heard and to present their side of the story in a meaningful manner before an unbiased decision maker at the Substantiation Hearing.

206. Plaintiffs also are entitled to a process commensurate with the seriousness of the allegations and the potential sanctions and repercussions they are facing. The allegations in this case could result in a sanction that would have lifelong ramifications for Mr. Healey, Ms. Lowell and Ms. Lowell's children, including: (i) falsely labelling Plaintiffs as child abusers; (ii) falsely labelling Plaintiffs as illegal drug users and drug addicts; (iii) stripping Ms. Lowell of her

parental rights, the right to familial association, and the custody of her children; and (iv) placing Plaintiffs on a list of child abusers that affects their ability to obtain and keep employment and positions and to maintain their honor good names within the community.

207. Plaintiffs' interests in the results of the Substantiation Hearings are significant.

Having the improper findings of substantiation upheld by Defendant Greenmun would:

- A. Jeopardize Ms. Lowell's parental rights and the liberty to raise her children as she sees fit;
- B. Cause emotional, psychological and perhaps physical harm to Mr. Healey, Ms. Lowell and her children;
- C. Deny Ms. Lowell and Mr. Healey the right to seek jobs freely, gain employment, and pursue careers;
- D. Preclude Ms. Lowell and Mr. Healey from engaging in community activities, such as coaching or volunteering with children, elders, or disabled persons; and
- E. Damage Ms. Lowell's and Mr. Healey's good names, goodwill, reputations, honor, and integrity.

208. Defendants have violated, are violating, and have contrived to violate, Plaintiffs'

due process rights in the following manner:

- A. The long delay in holding the Substantiation Hearings has harmed Ms. Lowell's and Mr. Healey's ability to present evidence, witnesses, and a defense against the claims against them;
- B. Plaintiffs are not permitted to review or examine the evidence against them, because the evidence against them has never been fully explained or documented. The Redacted Investigation Files, the only files that Plaintiffs have been permitted to review, were insufficient to provide them with adequate information about the charges and evidence against them;
- C. The Substantiation Hearing Officer has access to the unredacted Investigations files, as well as Plaintiffs' complete case files;
- D. Plaintiffs are not permitted to present evidence that is essential to their cases and that directly rebuts DCF's claims, because they are not permitted to bring Ms. Lowell's children to the hearing, or otherwise present evidence of her children's denial of DCF's claims, including physical evidence that her son is not scarred, and compelled testimony

from Thaddeus Weld's aunt and uncle regarding the supposed injury. This evidence is necessary to the factfinder in order to assess the credibility of the investigators and the information relied on by Defendants in making the original substantiation decision;

- E. The complete Investigation File and the complete case file would be admitted and considered as evidence at the Substantiation Hearings, without any verification or authentication, making it improper hearsay, especially because the credibility of its authors would be relied on by the Substantiation Hearing Officer;
- F. Plaintiffs are not permitted any form of cross-examination of witnesses, including cross-examination of the author or authors of the Investigation Files or the case files, or the witnesses cited by or relied on in the Investigation Files or the case files. Some form of cross-examination (or similar challenge) is essential to Plaintiffs' due process rights, because any finding of wrongdoing by the Substantiation Hearing Officer would rest on an assessment of the credibility of the files and their author or authors;
- G. Much of the information in the Investigation File is false and was fabricated by the Defendants, including Defendant Gadwah. The information related to Ms. Lowell crushing and snorting a pill is false, a fact that Mary Weld would testify to if she were permitted to at the Substantiation Hearing. The remaining allegations were fabricated by Defendants;
- H. The Substantiation Hearing Officer is permitted to, and usually does, conduct *ex parte* examinations of DCF officials. Plaintiffs have no opportunity to review, assess or challenge any evidence presented by these *ex parte* communications. Despite Defendant Clark's letter, Plaintiffs cannot be certain they would know about, let alone be able to rebut, any *ex parte* communication;
- I. To the extent that the Substantiation Hearing Officer relies on Defendant Gadwah's assessments or investigation, she was biased against Ms. Lowell and Mr. Healey, as evidenced by Defendant Gadwah's consistent failure to allow Ms. Lowell, Mr. Healey, or any other party potentially friendly to them, to ask any questions, and her prejudicial assumption that Ms. Lowell and Mr. Healey were drug addicts without any actual evidence to support that assumption; and
- J. Defendants did not follow DCF's procedures by failing to keep its investigations and initial substantiation conclusions confidential, including by Ms. Gadwah's statements in public and in court at a custody hearing, and her communications with Ms. Lowell's ex-husbands. These departures from DCF's procedures violated Ms. Lowell's due process rights by labelling her as a child abuser without any due process and

improperly subjected her to the stigma of being substantiated, the loss of custody of her children for 305 days for two of the children and 356 days for the third, and the loss of her job;

209. An actual controversy exists between Plaintiffs and Defendants, acting in their official capacities, regarding whether DCF's procedures, as applied to Ms. Lowell and Mr. Healey, violate the Due Process Clauses of the United States Constitution, the Vermont Constitution, and the requirements of Vermont law and DCF Rules, Policies and procedures.

210. An actual controversy does not exist regarding the issue of whether the Substantiation Hearing is fair, as Defendant Clark has admitted that it is not fair and not intended to be fair. Accordingly, an actual controversy exists as to whether an unfair Substantiation Hearing is constitutionally permissible.

211. Defendants have a duty to enforce the provisions of DCF's Rules, Policies and procedures, and have actually enforced, or would actually enforce, those Rules, Policies and procedures, against Plaintiffs.

212. The declaratory relief sought would enable this Court to Order prospective remedial injunctive relief.

- A. The declaratory judgment sought is permissible under the Eleventh Amendment because it is ancillary to a prospective injunction designed to remedy Defendants' continuing violations of federal law.
- B. Defendants may be prohibited from applying DCF's Rules, Policies and procedures against Plaintiffs in a manner that violates their rights to due process under the United States and Vermont Constitutions, and the requirements of Vermont law and DCF Rules, Policies and procedures, including that the Substantiation Hearings be conducted within 35 days and be impartial and fair.

213. Plaintiffs are entitled to a declaration that DFC's policies and procedures, as applied to Ms. Lowell and Mr. Healey, violate the Due Process Clauses of the United States Constitution, the Vermont Constitution, and the requirements of Vermont law and DCF Rules,

Policies and procedures, including that the Substantiation Hearings be conducted within 35 days and be impartial and fair (a fact Defendant Clark admitted).

214. Pursuant to 42 U.S.C. § 1988, Plaintiffs are entitled to the attorneys' fees and costs incurred in bringing this action.

COUNT II
42 U.S.C. § 1983: Violation of Due Process Provisions
of United States and Vermont Constitutions: Procedural Due Process
(Against All Defendants)
(By Plaintiffs Lowell and Healey)

215. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

216. This Count is brought against all Defendants, in their official capacities, for injunctive relief.

217. The Defendants have acted under color of law in violating the Plaintiffs' rights under the Fifth and Fourteenth Amendments to the United States Constitution and the due process clauses of the Vermont Constitution.

218. The Defendants acted knowingly, with disregard for the Plaintiffs' clearly established constitutional rights, of which a reasonable person would have known, in pursuing an improper and unconstitutional substantiation process, including a Substantiation Hearing, and consenting to, directing, establishing and enforcing the improper and unconstitutional procedures that were used in the substantiation process and would be used at the Substantiation Hearing. Despite knowing that the procedures were flawed, Defendants failed to remedy them, and allowed the flawed procedures to continue, exhibiting deliberate indifference to Plaintiffs' rights.

219. Those Defendants who hold supervisory positions have actively participated to violate Plaintiffs' rights, or acted with gross negligence or deliberate indifference in supervising

subordinates who repeatedly committed these wrongful acts, and similar wrongful acts against other families, despite knowing that these wrongful acts were occurring.

220. As a direct and proximate result of the Defendants' violations of the Plaintiffs' constitutional rights, Ms. Lowell and Mr. Healey, in the absence of injunctive relief, would suffer severe and substantial damages as the result of an improper finding of substantiation at the Hearing. These damages include loss of custody of Ms. Lowell's children; the physical, emotional and psychological damage resulting from the loss of custody of, and separation from, Ms. Lowell's children; diminished earnings capacity; lost career and business opportunities; litigation expenses including attorney fees; loss of reputation; humiliation, embarrassment, inconvenience, mental and emotional anguish and distress; and other compensatory damages, in an amount to be determined at trial or by the Court.

- A. Pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to compensation for any damages suffered as a result of the unconstitutional actions of the Defendants.
- B. An injunction issued by this Court, if upheld on appeal, likely would prevent much, if not all, of the damage suffered by Plaintiffs as the result of an improper and unconstitutional finding at the Substantiation Hearing.

221. Defendants' continued actions against the Plaintiffs under DCF's Rules, Policies and procedures are causing substantial, immediate, and continuing damage to the Plaintiffs.

222. Pursuant to 42 U.S.C. §1983, the Plaintiffs are entitled to an injunction from this Court prohibiting: (a) the Substantiation Hearing from taking place using the existing flawed, unconstitutional procedures; and (b) any result of the Substantiation Hearing from taking effect, including Ms. Lowell's loss of parental rights, and Plaintiffs' names appearing on any the Registry.

223. Pursuant to 42 U.S.C. §1988, the Plaintiffs are entitled to attorneys' fees and costs incurred in bringing this action.

COUNT III
42 U.S.C. § 1983: Violation of Due Process Provisions
of United States and Vermont Constitutions: Procedural Due Process
(Against the Individual Defendants)
(By Ms. Lowell)

224. Ms. Lowell repeats and re-alleges the foregoing paragraphs as if fully set forth herein.

225. This Count is brought against the Individual Defendants in their individual capacities for damages.

226. The Individual Defendants have acted under color of law in violating Ms. Lowell's rights under the Fifth and Fourteenth Amendments to the United States Constitution, and the due process clauses of the Vermont Constitution.

227. The Individual Defendants acted knowingly, with disregard for Ms. Lowell's clearly established constitutional rights, of which a reasonable person would have known. Despite knowing that the procedures were flawed, the Individual Defendants failed to remedy them, and allowed the flawed procedures to continue, exhibiting deliberate indifference to Plaintiffs' rights.

228. These rights include independent rights to privacy, and familial and bodily integrity.

229. Those Individual Defendants who hold supervisory positions have actively participated to violate Ms. Lowell's rights, or acted with gross negligence or deliberate indifference in supervising subordinates who repeatedly committed these wrongful acts, and similar wrongful acts against other families, despite knowing that these wrongful acts were occurring.

230. The Individual Defendants' conduct, as described herein, was malicious, reckless, and callously indifferent to Ms. Lowell's rights, such that she is entitled to an award of punitive damages.

231. As a direct and proximate result of the Individual Defendants' knowing violations of Ms. Lowell's constitutional rights, Ms. Lowell suffered severe and substantial damages. These damages include: loss of custody of her children for 305 days for two of the children and 356 days for the third; the physical, emotional and psychological damage resulting from the loss of custody of, and separation from, her children; being forced by the Individual Defendants to enter MAT and undergo urinalysis and take suboxone, without cause; by having Defendant Gadwah violate confidentiality provisions by falsely stating that she had been substantiated for child abuse; diminished earnings capacity; lost career and business opportunities (including the loss of her job as a personal care specialist); litigation expenses including attorney fees; loss of reputation; humiliation, embarrassment, inconvenience; mental and emotional anguish and distress; and other compensatory damages, in an amount to be determined at trial.

232. Pursuant to 42 U.S.C. §1983, Ms. Lowell is entitled to compensation for any damages that she already suffered or are ongoing as a result of the unconstitutional actions of the Individual Defendants.

233. Pursuant to 42 U.S.C. §1988, Ms. Lowell is entitled to attorneys' fees incurred in bringing this action.

COUNT IV
42 U.S.C. § 1983: Violation of Due Process Provisions
of United States Constitution: Substantive Due Process
(Against the Individual Defendants)
(By Ms. Lowell)

234. Ms. Lowell repeats and re-alleges the foregoing paragraphs as if fully set forth herein.

235. This Count is brought against the Individual Defendants in their individual capacities for damages.

236. The Individual Defendants have acted under color of law in violating Ms. Lowell's rights under the Fifth and Fourteenth Amendments to the United States Constitution, and the due process clauses of the Vermont Constitution.

237. The Individual Defendants acted knowingly, and with disregard for Ms. Lowell's clearly established constitutional rights, of which a reasonable person would have known. Despite knowing that the procedures were flawed, the Individual Defendants failed to remedy them, and allowed the flawed procedures to continue, exhibiting deliberate indifference to Ms. Lowell's rights.

238. These rights include independent rights to privacy, and familial and bodily integrity.

239. Those Individual Defendants who hold supervisory positions have actively participated to violate Ms. Lowell's rights, or acted with gross negligence or deliberate indifference in supervising subordinates who repeatedly committed these wrongful acts, and similar wrongful acts against other families, despite knowing that these wrongful acts were occurring.

240. The State of Vermont repeatedly has made it clear, including through its open letters to the Attorney General and Secretary of Homeland Security, and by its arguments and positions in cases like *State of Washington*, that separating families without cause is outrageous and shocking, and that it inflicts severe harm on parents and children.

241. Similarly, forcing an individual to take an addictive and harmful drug for no reason and without any investigation or cause, is outrageous and shocking. Violating Ms.

Lowell's confidentiality by making false, public statements in about her is also outrageous and shocking.

242. The Individual Defendants' conduct, as described herein, was intentional, malicious, reckless, and callously indifferent to Ms. Lowell's rights, such that she is entitled to an award of punitive damages.

243. These violations of Ms. Lowell's rights were so egregious and outrageous that they are shocking to the contemporary conscience.

244. As a direct and proximate result of the Individual Defendants' knowing violations of Ms. Lowell's constitutional rights, Ms. Lowell suffered severe and substantial damages. These damages include: loss of custody of her children for 305 days for two of the children and 356 days for the third; the physical, emotional and psychological damage resulting from the loss of custody of, and separation from, her children; being forced by the Individual Defendants to enter MAT and undergo urinalysis and take suboxone, without cause; by having Defendant Gadwah violate confidentiality provisions by falsely stating that she had been substantiated for child abuse; diminished earnings capacity; lost career and business opportunities (including the loss of her job as a personal care specialist); litigation expenses including attorney fees and costs; loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress; and other compensatory damages, in an amount to be determined at trial.

245. Pursuant to 42 U.S.C. §1983, Ms. Lowell is entitled to compensation for any damages that she already suffered or are ongoing suffered as a result of the unconstitutional actions of the Individual Defendants.

246. Pursuant to 42 U.S.C. §1988, Ms. Lowell is entitled to attorneys' fees and costs incurred in bringing this action.

COUNT V
Violation of Title II of the Americans with Disabilities Act
42 U.S.C. § 12131, *et seq.*
(Against DCF)
(By Ms. Lowell)

247. Ms. Lowell repeats and re-alleges the foregoing paragraphs as if fully set forth herein.

248. This Count is brought against DCF *per se*, and against the State of Vermont *per se*.

249. Title II of the ADA prohibits qualified individuals with disabilities from being discriminated against by a public entity. 42 U.S.C. §12132

250. Ms. Lowell is perceived as, and protected as, a qualified individual with disabilities, as defined by the ADA, in that DCF regarded Ms. Lowell as being addicted to illegal drugs, even though she was in fact not engaging in illegal drug use, or because she was previously addicted to drugs and had been rehabilitated (including through supervised drug rehabilitation programs) and was no longer engaging in the illegal use of drugs. 42 U.S.C. § 12114(b).

251. DCF is subject to the ADA as a “department, agency, special purpose district, or other instrumentality of a State.” 42 U.S.C. § 12131.

252. DCF discriminated against Ms. Lowell by reason of the perceived disability of drug addiction by: (i) extrajudicially removing Ms. Lowell’s children from her custody; (ii) requiring Ms. Lowell to enter MAT programs, undergo urinalysis, and take suboxone, without cause; (iii) breaching confidentiality requirements and illegally alerting Ms. Lowell’s ex-husbands of DCF’s pending investigation, and scheming with them to have Ms. Lowell’s custody rights taken away; and (iv) falsifying records and ignoring exculpatory evidence in order to substantiate Plaintiffs.

253. DCF's actions, including those of Defendant Gadwah, were motivated by discriminatory animus and ill-will due to Ms. Lowell's perceived disability, drug addiction.

254. As a result of DCF's actions, Ms. Lowell suffered severe and substantial damages. These damages include: loss of custody of her children for 305 days for two of the children and 356 days for the third; the physical, emotional and psychological damage resulting from the loss of custody of, and separation from, her children; being forced by DCF to enter MAT and undergo urinalysis and take suboxone, without cause; by having Defendant Gadwah violate confidentiality provisions by falsely stating that she had been substantiated for child abuse; diminished earnings capacity; lost career and business opportunities (including the loss of her job as a personal care specialist); litigation expenses including attorney fees and costs; loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress; and other compensatory damages, in an amount to be determined at trial.

255. Pursuant to 42 U.S.C. §12134 and 28 C.F.R. § 35.175, Ms. Lowell is entitled to attorneys' fees and costs incurred in bringing this action.

256. The State of Vermont receives significant United States federal funding, including from the Department of Health and Human Services, to administer its family preservation and disability accommodation efforts, including under Title IV-E of the Social Security Act. As a condition of that funding, the State of Vermont has waived its immunity under the Eleventh Amendment of the United States Constitution, and is susceptible to suit for civil actions under Title II of the ADA, without sovereign immunity. As a state acting *qua* state, including through Defendant DCF, the doctrine of qualified immunity does not apply to the State of Vermont as it may to individual actors.

COUNT VI
Violation of Section 504 of the Rehabilitation Act
29 U.S.C. § 794, *et seq.*
(Against DCF)
(By Ms. Lowell)

257. Ms. Lowell repeats and re-alleges the foregoing paragraphs as if fully set forth herein.

258. This Count is brought against DCF *per se*, and against the State of Vermont *per se*.

259. Section 504 of the Rehabilitation Act prohibits qualified individuals with disabilities from being discriminated against by any program or activity receiving federal financial assistance. 29 U.S.C. § 794.

260. Ms. Lowell is perceived as, and protected as, a qualified individual with disabilities, as defined by the Rehabilitation Act, in that DCF regarded Ms. Lowell as being addicted to illegal drugs, even though she was in fact not engaging in illegal drug use, or because she was previously addicted to drugs and had been rehabilitated (including through supervised drug rehabilitation programs) and was no longer engaging in the illegal use of drugs. 29 U.S.C. § 705(20)(C).

261. DCF is subject to the Rehabilitation Act in that it is a program or activity that received federal financial assistance. 29 U.S.C. § 794.

262. DCF discriminated against Ms. Lowell by reason of the perceived disability of drug addiction by: (i) extrajudicially removing Ms. Lowell's children from her custody; (ii) requiring Ms. Lowell to enter MAT programs, undergo urinalysis, and take suboxone, without cause; (iii) breaching confidentiality requirements and illegally alerting Ms. Lowell's ex-husbands of DCF's pending investigation, and scheming with them to have Ms. Lowell's

custody rights taken away; and (iv) falsifying records and ignoring exculpatory evidence in order to substantiate Plaintiffs.

263. DCF's actions, including those of Defendant Gadwah, were motivated by discriminatory animus and ill-will due to Ms. Lowell's perceived disability, drug addiction. As a result of DCF's actions, Ms. Lowell suffered severe and substantial damages. These damages include: loss of custody of her children for 305 days for two of the children and 356 days for the third; the physical, emotional and psychological damage resulting from the loss of custody of, and separation from, her children; being forced by DCF to enter MAT and undergo urinalysis and take suboxone, without cause; by having Defendant Gadwah violate confidentiality provisions by falsely stating that she had been substantiated for child abuse; diminished earnings capacity; lost career and business opportunities (including the loss of her job as a personal care specialist); litigation expenses including attorney fees and costs; loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress; and other compensatory damages, in an amount to be determined at trial.

264. Pursuant to 29 U.S.C. § 794a(b), Ms. Lowell is entitled to attorneys' fees incurred in bringing this action.

265. The State of Vermont receives significant United States federal funding, including from the Department of Health and Human Services, to administer its family preservation and disability accommodation efforts, including under Title IV-E of the Social Security Act. As a condition of that funding, the State of Vermont has waived its immunity under the Eleventh Amendment of the United States Constitution, and is susceptible to suit for civil actions under Section 504 of the Rehabilitation Act, without sovereign immunity. As a state acting *qua* state,

including through Defendant DCF, the doctrine of qualified immunity does not apply to the State of Vermont as it may to individual actors.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant them the following relief, including that the Court:

- A. Issue a declaratory judgment as described above;
- B. Award Plaintiffs injunctive relief, both preliminary and permanent, as described above;
- C. Award Plaintiffs compensatory and punitive damages, in an amount to be determined at trial.
- D. Award Plaintiffs all other damages, fees, or costs that are available at law or equity;
- E. Award Plaintiffs their fees and costs of this suit, including, but not limited to, reasonable attorneys' fees as authorized by 42 U.S.C. §1988, or any other fees; and
- F. Grant Plaintiffs such other and further relief as it considers just and proper.

JURY DEMAND

Plaintiffs demand a jury trial on all issues so triable.

Respectfully submitted,

MIRIAM LOWELL and SETH HEALEY

By their attorneys,

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